Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-561

AMERICAN ELECTRIC POWER SYSTEM ET AL.,
Petitioners,

v.

SIERRA CLUB ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[List of Counsel on Inside Cover]

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

COUNSEL FOR PETITIONERS

AMERICAN ELECTRIC POWER SYSTEM

Peter J. Nickles

Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

ARKANSAS POWER & LIGHT COMPANY
OKLAHOMA GAS & ELECTRIC COMPANY
WISCONSIN POWER & LIGHT COMPANY

Richard M. Merriman
Peyton G. Bowman, III
James K. Mitchell

Reid & Priest
1701 K Street, N.W.
Washington, D.C. 20006

ATLANTIC RICHFIELD COMPANY

John E. Nolan, Jr.
Richard H. Porter

Steptoe & Johnson
1250 Conn. Ave., N.W.
Washington, D.C. 20036

CITIES SERVICE GAS COMPANY

Dale A. Wright
Harold L. Talisman

Littman, Richter, Wright & Talisman
1001 Conn. Ave., N.W.
Washington, D.C. 20036

Alfred O. Holl
James R. Winnie

Post Office Box 24128
Oklahoma City, Okla. 73125

KERR-McGEE CORPORATION

Peter J. Nickles

Covington & Burling
888 Sixteenth Street, N.W.
Washington, D. C. 20006

MONTANA POWER COMPANY
PORTLAND GENERAL ELECTRIC COMPANY
PUGET SOUND POWER & LIGHT COMPANY
WASHINGTON WATER POWER COMPANY

Francis M. Shea
Richard T. Conway
David Booth Beers
Frederick C. Schafrick

Shea & Gardner
734 Fifteenth Street, N.W.
Washington, D.C. 20005

NORTHERN NATURAL GAS COMPANY

Charles A. Case, Jr.
David B. Ward

Case & Ward
910 Sixteenth Street, N.W.
Washington, D.C. 20006

PANHANDLE EASTERN PIPE LINE COMPANY

Robert L. Ackerly
Joseph S. Wager

Sellers, Connor & Cuneo
1625 K Street, N.W.
Washington, D.C. 20006

PATRICK J. McDONOUGH

Max N. Edwards

Collier, Shannon, Rill & Edwards
1666 K Street, N.W.
Washington, D.C. 20006

PEABODY COAL COMPANY

James W. McDade

McDade & Lee
1130 Seventeenth St., N.W.
Washington, D.C. 20036

WESTMORELAND RESOURCES

Arthur W. Leibold, Jr.
William A. White

Dechert, Price & Rhoads
888 Seventeenth St., N.W.
Washington, D.C. 20006

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on June 16, 1975.

OPINIONS BELOW

The opinion of the court of appeals is reported at 514 F. 2d 856. The order of the court of appeals granting an injunction pending appeal is reported at 509

F. 2d 533. The order of the court of appeals remanding the case to the district court for supplemental findings is not reported. The opinion of the district court and its supplemental findings of fact are not reported. Copies of the foregoing opinions, orders, and findings are contained in the Appendices to the petition for a writ of certiorari filed October 9, 1975 by the Solicitor General to review the same judgment, No. 75-552.

JURISDICTION

The judgment of the court of appeals was entered on June 16, 1975. By order of September 9, 1975, Mr. Justice White extended the time within which to file a petition for a writ of certiorari to and including October 10, 1975. The jursdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Federal law authorizes the Department of the Interior to permit leases for coal mining on federal lands by private parties under approved mining plans. In order to evaluate the environmental effects of its leasing program and decide upon future actions, the Department prepared a nationwide, programmatic environmental impact statement. Before issuing individual leases, the Department prepares an environmental analysis or impact statement, as appropriate, considering the effects of that lease, both individually and in combination with other leases. When necessary or appropriate, the Department also prepares impact statements for areas of intermediate size, such as the 7,800 square mile "Eastern Powder River Coal Basin" within Wyoming.

The question presented is whether a court may intervene in this decision-making process to require federal agencies to engage, as well, in "regional" planning and to issue an additional impact statement for a four-state area so long as the agencies continue "contemplating" private applications, even though there neither is, nor is there under preparation, a recommendation or report on a proposal for major federal action with respect to that four-state area.

STATUTE INVOLVED

Section 102 of the National Environmental Policy Act of 1969, 83 Stat. 853, 42 U.S.C. § 4332, provides in relevant part:

> "(2) all agencies of the Federal Government shall—
>
> * * *
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

STATEMENT OF THE CASE

This case turns on the proper construction of the "impact statement" requirements of the National Environmental Policy Act ("NEPA"). The case involves the application of NEPA to the leasing of the federal government's coal deposits in a 90,000 square-mile area in Montana, Wyoming, North Dakota, and South Dakota, as well as the related use of waters and lands under the jurisdiction of the Departments of Interior, Agriculture, and Army.

In 1973 respondent Sierra Club and others ("Sierra")[1] sued in the District Court for the District of Columbia to prevent these federal departments from issuing any leases or other permits in this area, which Sierra termed the "Northern Great Plains Region". Sierra asserted that NEPA required the preparation of "a comprehensive environmental-impact statement . . . of all aspects of coal and coal-related development in the region" before any further leases, permits, etc. could be issued anywhere within that area.

Petitioners are eight electric public utilities, three natural gas companies, four coal mining companies, and an individual rancher. Since petitioners are vitally interested in the development of the coal resources in the area described by Sierra's complaint, they intervened as defendants in the district court and participated as appellees in the court of appeals. Peti-

[1] Plaintiffs (Respondents here) were, in addition to the Sierra Club, the National Wildlife Federation, the Northern Plains Resource Council, the League of Women Voters of Montana, the Montana Wilderness Association, the Montana League of Conservation Voters, and the League of Women Voters of South Dakota. Jurisdiction was founded upon 28 U.S.C. § 1331(a).

tioners are, therefore, subject to the judgment of the court of appeals. In addition, two petitioners, Atlantic Richfield Company and Kerr-McGee Corporation, have proposals for approval of mining plans before the Secretary of Interior which the Secretary has indicated he would grant in the absence of the court of appeals' continuing injunction against approval of mining plans and railroad rights-of-way in the Eastern Powder River Coal Basin.

This is a companion petition to that filed on October 9, 1975 by the Solicitor General on behalf of the Acting Secretary of the Interior, the Secretary of Agriculture, and the Secretary of the Army to review the same judgment. The remaining relevant facts are contained in that petition.

REASONS FOR GRANTING THE WRIT

The Solicitor General in his petition presents essentially four reasons for granting the writ: (1) the importance of this case in administering NEPA in relation to coal development, especially in light of the Nation's critical shortage of energy; (2) the conflict between the decision below and the decision of this Court in *Aberdeen & Rockfish R.R.* v. *Students Challenging Regulatory Agency Procedures,* No. 73-1966 (June 24, 1975) (*SCRAP II*); (3) the conflict between the decision below and five recent court of appeals decisions in the Fifth, Ninth, and Tenth Circuits;[2] and (4) the incorrectness of the decision below

[2] *Sierra Club* v. *Callaway,* 499 F. 2d 982 (5th Cir. 1974); *Jicarilla Apache Tribe of Indians* v. *Morton,* 471 F. 2d 1275 (9th Cir. 1973); *Environmental Defense Fund, Inc.* v. *Armstrong,* 487 F. 2d 814 (9th Cir.), *affirming* 356 F. Supp. 131 (N.D. Cal. 1973); *Trout Unlimited* v. *Morton,* 509 F. 2d 1276 (9th Cir. 1974); *Sierra Club* v. *Stamm,* 507 F. 2d 788 (10th Cir. 1974).

in not affirming the district court's judgment that no regional environmental impact statement was required since, as the district court found, there was no existing or proposed federal program for regional development of coal within the four-state area described in Sierra's complaint.

We endorse the views expressed in this connection by the Solicitor General in his petition. We thus fully support the Solicitor General's petition, as we supported the government's position in the district court and the court of appeals. However, in both the district court and the court of appeals we separately filed extensive briefs and participated in oral argument. Therefore, we urge that this petition be granted so that we may present our arguments to this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: October 10, 1975

[List of Counsel on next page]

AMERICAN ELECTRIC POWER SYSTEM

Peter J. Nickles

Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

ARKANSAS POWER & LIGHT COMPANY
OKLAHOMA GAS & ELECTRIC COMPANY
WISCONSIN POWER & LIGHT COMPANY

Richard M. Merriman
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1001 Conn. Ave., N.W.
Washington, D.C. 20036

Alfred O. Holl
James R. Winnie

Post Office Box 24128
Oklahoma City, Okla. 73125

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888 Seventeenth St., N.W.
Washington, D.C. 20006

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